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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JEFFREY W. TAM,

Plaintiff,

v.

JOHN E. POTTER, Postmaster General,

Defendant.

No. 07-2747 SI

**PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Date: June 27, 2008

Time: 9:00 a.m.

Place: Courtroom 10, 19th Fl.

This action having come regularly on for hearing before the Court on the motion of defendant for summary judgment pursuant to F.R.C.P. 56, and the respective parties having been afforded an opportunity to be heard, the Court having considered the respective pleadings and the arguments thereon, and the entire matter having been duly submitted after the Court was fully advised thereon,

IT IS HEREBY ORDERED that the defendant's motion to for summary judgment is GRANTED based on the following reasons:

1 (1) Plaintiff failed to timely file his Equal Employment Opportunity (“EEO”) complaint  
2 related to his failure to promote claim;

3 (2) Plaintiff failed to exhaust administrative remedies for his age discrimination and  
4 hostile work environment/harassment claim;

5 (3 )Plaintiff failed to establish a claim of discrimination based on failure to promote  
6 because he failed to show that defendant’s reasons for not promoting plaintiff were pretextual;

7 (4) Plaintiff failed to establish a prima facie case of discrimination based on his failure  
8 to receive reassignment to a driving position in 2002, defendant’s denial of his 2005 request to  
9 change his work schedule, defendant’s denial of his request for annual leave in February 2005,  
10 defendant’s failure to call him to work overtime on February 12, 2005, and defendant’s alleged  
11 attempt to intimidate him because he has not established that these acts constitute adverse  
12 employment actions and identified no similarly situated employee outside of plaintiff’s  
13 protected classes who was treated more favorably than he was. Moreover, plaintiff failed to  
14 show that defendant’s reasons for his actions were pretextual.

15 (4) Plaintiff failed to establish a claim of retaliation based on defendant’s restructuring  
16 of the 2005 bulk mail assistant schedule because plaintiff failed to show that defendant’s  
17 reasons were pretextual.

18 (5) Plaintiff failed to establish a claim of hostile work environment because, as a matter  
19 of law, the conduct plaintiff complains of is not sufficiently severe as to alter the conditions of  
20 employment. Moreover, plaintiff failed to establish that any of the harassing conduct he alleges  
21 was directed at him because of his race or national origin.

22 (6) Plaintiff cannot bring a private cause of action for violation of the collective  
23 bargaining agreement between the American Postal Worker’s Union, AFL-CIO and the United  
24 States Postal Service because the agreement contains a binding procedure for resolving  
25 grievances.  
26

(7) Plaintiff cannot obtain punitive damages from the United States Postal Service under Title VII.

DATED: \_\_\_\_\_

\_\_\_\_\_  
SUSAN ILLSTON  
United States District Court Judge